

Island of Guam, Government of Guam
Department of Land Management Officer of the Recorder

File for Record is Instrument No. 903129

On the Year 17 Month 02 Day 13 Time 9:41

Recording Fee DE-OFFICIO Receipt No. _____

Deputy Recorder MAY M. CASTRO

Above Space for Recorder's Use only

ORIGINAL

GUAM LAND USE COMMISSION REGULAR MEETING MINUTES



Department of Land Management Conference Room
ITC Building, Tamuning



Thursday, January 12, 2017
1:39 p.m. to 2:00 p.m.

GUAM LAND USE COMMISSION
Regular Meeting
Thursday, January 12, 2017
Department of Land Management Conference Room
3rd Floor ITC Building, Tamuning

MEMBERS PRESENT:

Mr. Victor Cruz, Vice Chairman

Ms. Conchita Bathan, Commissioner

Mr. Tae Oh, Commissioner

Mr. Michael Borja, Executive Secretary

Ms. Kristan Finney, Legal Counsel

Excused: Chairman John Z. Arroyo

PLANNING STAFF PRESENT:

Mr. Marvin Aguilar, Guam Chief Planner

Mr. Penmer Gulac, Case Planner

Ms. Celine Cruz, Case Planner

Ms. Cristina Gutierrez, Recording Secretary

GUAM LAND USE COMMISSION GUAM SEASHORE PROTECTION COMMISSION Attendance Sheet

Department of Land Management Conference Room
590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

Date of Meeting: Thursday, January 12, 2017

Time of Meeting: GLUC: 1:30pm GSPC: 2:00pm

<input checked="" type="checkbox"/>	GLUC
<input checked="" type="checkbox"/>	Regular
<input type="checkbox"/>	Special
<input checked="" type="checkbox"/>	Quorum
<input type="checkbox"/>	Non-Quorum

<input checked="" type="checkbox"/>	GSPC
<input checked="" type="checkbox"/>	Regular
<input type="checkbox"/>	Special
<input type="checkbox"/>	Quorum
<input checked="" type="checkbox"/>	Non-Quorum

COMMISSION MEMBERS

SIGNATURE

John Z. Arroyo, Chairman

ABSENT (EXCUSED)

Victor F. Cruz, Vice Chairman

[Signature]

Conchita D. Bathan, Commissioner

[Signature]

Tae S. Oh, Commissioner

ABSENT (EXCUSED)

Hardy T.I. Vy, Commissioner

Michael J.B. Borja, Executive Secretary

[Signature]

Kristan K. Finney, Legal Counsel

[Signature]

Marvin Q. Aguilar, Chief Planner

[Signature]

Frank Taitano, Planner IV

[Signature]

Penmer Gulac, Planner IV

[Signature]

Celine Cruz, Planner IV

M. Cristina Gutierrez, WPS II

ADJOURNMENT: GLUC: 2:00pm GSPC: 2:03pm

**Location: Department of Land Management Conference Room
590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning**

Thursday, January 12, 2017

1.39 PM

2:10 pm

[illegible]

**Location: Department of Land Management Conference Room
590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning**

<input checked="" type="checkbox"/>	GLUC	<input checked="" type="checkbox"/>	Regular	Date:	Thursday, January 12, 2017
<input checked="" type="checkbox"/>	GSPC	<input type="checkbox"/>	Special	Time:	1:39 pm
<input checked="" type="checkbox"/>	Quorum	<input type="checkbox"/>	No Quorum	Adjournment:	2:00 pm

(THIS RECORD WILL BE USED IN THE TRANSCRIPTION OF THE GLUC/GSPC MINUTES. PLEASE PROVIDE YOUR FULL NAME AND WHO YOU REPRESENT, I.E., ITEM ON AGENDA.)

[illegible]

GUAM LAND USE COMMISSION REGULAR MEETING MINUTES
Department of Land Management Conference Room, 3rd Floor ITC Bldg., Tamuning
Thursday, January 12, 2017 • 1:39 p.m. to 2:00 p.m.

I. Notation of Attendance

Acting Chairman Cruz called to order the regular meeting of the Guam Land Use Commission for Thursday, January 12, 2017 at 1:39 p.m., noting a quorum.

Prior to the notation of attendance Executive Secretary Michael Borja announced the following--

Michael Borja (Executive Secretary) I just need to just make a few general statements about new public laws that went into affect very recently that have a direct affect on the Guam Land Use Commission.

First, we have Public Law 33-219 which deals with the make-up of the Commission. In this Public Law it reduced the number of members; the number of Commissioners from seven to five and a quorum of three is required for a general meeting. It also had a ... three votes; three affirmative votes are required to approve a project, an application. However, it does also require the empanelment of a hybrid Commission with four additional members designated from the Mayor's Council and at that time then you will have seven members present and you will require four to be a quorum. That hybrid Commission is empanelled when a development cost of an application is at three million dollars or greater. And then upon the termination of the disposition of that project application then the hybrid Commission is no longer applicable and we go back to a regular Commission. But, it's only for those times when we are speaking on that application.

The other Public Law 33-209, this one instructs the process for handling an application to the Guam Land Use Commission. And basically what it does is it requires that the reports that an Application Review Committee provides for the Guam Land Use Commission must go to the Mayor's Municipal Planning Council for the respective Council that has the ... where this application will have an effect. And as much as possible then those members of the Application Review Committee should be present at the Mayor's Municipal Council meeting to discuss their report and answer any questions that has to do with that specific application.

So, in these two public laws because 33-219 has changed the composition of the Land Use Commission a quorum now is only three (3) members; so you have three members present, and you have a quorum.

Present: Vice Chairman Victor Cruz, Commissioner Tae Oh, Commissioner Conchita Bathan, Executive Secretary Michael Borja, Legal Counsel Kristan Finney, Guam Chief Planner Marvin Aguilar and Planning Staff.

[Excused absence: Chairman John Arroyo, Commissioner Hardy Vy]

Acting Chairman Cruz we have, we also have two meetings supposedly today which is the Seashore ---

Michael Borja we will have to do that at the conclusion of this one.

II. **Approval of Minutes**

Acting Chairman Cruz approval of the Minutes from the GLUC regular meeting of Tuesday, November 29, 2016. Has the Commission had time to review it?

Commissioner Oh yes. Mr. Chair, I move to approve the Minutes of the GLUC regular meeting of Tuesday, November 29, 2016; and any comments or revisions to be submitted to the Office by close of business tomorrow, which is January 13, 2017.

Acting Chairman Cruz there's a motion, do I have a second.

Commission Bathan second.

Acting Chairman Cruz the motion is seconded. All in favor of the motion please indicate by saying "aye" or raising your hand. [**Acting Chairman Cruz, Commissioners Oh and Bathan**].

[Motion to approve the November 29, 2016 Minutes was passed unanimously; 3 ayes, 0 nay]

III. **Old or Unfinished Business** [None]

IV. **New Business** [None]

V. **Administrative and Miscellaneous Matters**

Horizontal Property Regime

- A. The Applicant, Allegro Properties Corporation represented by Atty. Melinda Swavely, Esq.; requests the issuance of a First Supplementary Final Public Report for the Avida Townhomes, on Lot 5360-R19NEW-4, in an "R2" (Multi Family Dwelling) zone, in the Municipality of Mangilao, HPR No. 168, Application No. 2017-07C.
Case Planner: Celine Cruz

Celine Cruz summarizes the Staff Report to include facts, purpose, staff analysis/discussion, recommendation and conditions. [For full content/context, please refer to attached staff report.]

[Attachment A – Staff Report dated January 3, 2017]

Acting Chairman Cruz will the representative please state your name.

Melinda Swavely good afternoon Commissioners and Happy New Year! So, I am, as Ms. Cruz mentioned, I am requesting a first supplementary final public report for the Avida Townhomes. The Developer as Ms. Cruz mentioned is trying to sell the project as a whole. There certainly is an advantage that they do have an HPR (Horizontal Property Regime) so that if in fact there is a new purchaser, that purchaser could sell them individually so it makes the project much more marketable for them. As we all know, there's problems right now with the H2 program that may drive the price of construction up. And it may, and unfortunately for us we're having this problem. For the developer it may have an advantage of making the project more marketable to purchasers on island and off-island because the cost of construction will increase. And so he will be able to get potentially on market price that he is looking at, a selling price that he is looking for.

I have nothing else to add, but will be glad to answer any questions.

Acting Chairman Cruz any questions?

Commissioner Oh I have a question. Construction is completed?

Melinda Swavely oh yes. Actually, this is a conversion of an apartment. So, the project has been completed for several years. It is being rented and it is fully rented right now. But, the owner wanted to convert the project to condominiums and actually started the process a few years back, but because of certain delays the HPR was not issued until thirteen months ago. At the time he was looking to change it into an HPR. The military buildup seemed to be imminent in terms of us getting the Marines in, and so he felt that that would be an attractive thing to be able to have individual units that he could sell. And then of course we know there's been market fluctuations, and so that's where we are today. But, the project was built several years and converted to HPR.

Commissioner Oh I would think it will be a little bit more marketable to sell the units individually. Is there a particular reason as to why the owner is emphasizing to sell the units as a whole?

Melinda Swavely you know, that is his own strategy I don't think that was his initial strategy as I mentioned. But, I think now with what has been happening he feels as if that might bring a better price to him. It's a personal decision.

Acting Chairman Cruz anything else? If none, what does the body feel?

Commissioner Oh Mr. Chair, I move to accept the request for the issuance of the First Supplementary Final Public Report for Avida Townhomes on Lot 5360-R19NEW-4, in an "R2"

zone, in the municipality of Mangilao, HPR No. 168, Application 2014-07C for a period of thirteen months to expire on February 12, 2018.

Commissioner Bathan seconds the motion.

Acting Chairman Cruz there's a motion and seconded. All those in favor of the motion say "aye" or raise their hand [**Acting Chairman Cruz, Commissioners Oh and Bathan**].

[Motion passed unanimously; 3 ayes, 0 nay – Motion is approved]

Acting Chairman Cruz the next item on the agenda ---

Order to Show Cause

- B. Guam Wanfang Construction Ltd; Order to Show Cause as to the reason(s) for failure to comply with Conditions of approval of the Zone Variance for height for the proposed Pago Bay Marina Report as noted on the Notice of Action dated May 10, 2016, Application No. 2015-29B. Case Planner: Celine Cruz

Marvin Aguilar (Guam Chief Planner) reads the staff report to include facts, purpose and chronological history of the application. [For full content/context, please refer to the attached report.]

[Attachment B – Staff Report dated January 6, 2017]

Acting Chairman Cruz can we have the representatives of Wanfang come up to the table.

Barbara Burkhardt (with John Sherman) good afternoon and I am the Designer of Record and Consultant to Wanfang Construction, and prepared the materials that were submitted to you on December 21st.

Acting Chairman Cruz for the record, I would like it be known that they did submit their report dated December 21st, 2016.

Barbara Burkhardt I'm sorry, just one thing. Our Attorney did submit the Direct Agreement on December 21st and it's in our documents.

Acting Chairman Cruz for the record, we do have a quorum pursuant to Public Law 33-219. As much as I want to review your response to the Order to Show Cause, I am inclined to take a step back and allow other members particularly the Chairman who has been involved in this from the very beginning is not here to take the opportunity to view the documents. For the record, as I stated, we have received it and we are formally telling you that we received your response. This is particularly important because we also have a new member and we would like

the opportunity, since the Chairman who is not here to really get into it and sit down with the others and for that purpose, like I said, we accept your report and we will just end here. I will not allow any further discussion from the applicant and neither from the Planner or the public.

Any comments?

Commissioner Oh I completely agree. I think we need the Chairman who has been involved from the beginning and is absent. We need to discuss this in further detail and requiring his attendance. And considering that we have a new member coming we would like to also get some input from the new member. I think, as of now, yes, we have received your report and your response. But I think our plan is to further review the documents and discuss it upon the return of the Chairman.

Acting Chairman Cruz is there anything else?

Michael Borja I just want to note Mr. Chairman that by accepting this, we now make it a public record and it will be available on the GLUC Land Management website.

Acting Chairman Cruz this is it. We don't have anything else on the agenda. What is the will of the members?

VI. Adjournment

Commissioner Oh Mr. Chair, I move to adjourn the regular meeting of GLUC for Thursday, January 12, 2017.

Commissioner Bathan second.

Acting Chairman Cruz there's a motion and seconded; all in favor say "aye" [**Acting Chair Cruz, Commissioners Oh and Bathan**]

[Motion passes, meeting was adjourned]

The regular meeting of the Guam Land Use Commission for Thursday, January 12, 2017 was adjourned at 2:00 p.m.

Approved by:

Transcribed by:



Victor F. Cruz, Acting Chairman
Guam Land Use Commission



M. Cristina Gutierrez, *Pro Tem*
DLM, Planning Division

Date Approved: Feb. 9, 2017



GUAM LAND USE COMMISSION

Chairman John Z. Arroyo
Vice Chairman Victor F. Cruz
Commissioner Conchita D. Bathan

Commissioner Tae S. Oh
Commissioner Hardy Tan I. Vy

Michael J.B. Borja, Executive Secretary
Kristan Finney, Assistant Attorney General

AGENDA - REVISED

Regular Meeting

Thursday, January 12, 2017 at 1:30 p.m.

Department of Land Management Conference Room

590 S. Marine Corps Drive, 3rd Floor, ITC Building, Tamuning

[As advertised in the Guam Daily Post on January 5th and January 10th, 2017]

I. Notation of Attendance [] Quorum [] No Quorum

II. Approval of Minutes

- GLUC Regular Meeting of Tuesday, November 29, 2016

III. Old or Unfinished Business [None]

IV. New Business [None]

V. Administrative and Miscellaneous Matters

Horizontal Property Regime

- A. The Applicant, Allegro Properties Corporation represented by Atty. Melinda Swavely, Esq.; requests the issuance of a First Supplementary Final Public Report for the Avida Townhomes, on Lot No. 5360-R19NEW-4, in an "R2" (Multi Family Dwelling) zone, in the Municipality of Mangilao, HPR No. 168. Application No. 2014-07C.
Case Planner: Celine Cruz

Order to Show Cause

- B. Guam Wangfang Construction Ltd; Order to Show Cause as to the reason(s) for failure to comply with Conditions of Approval of the Zone Variance for Height for the proposed Pago Bay Marina Resort as noted on the Notice of Action dated May 10, 2016. Application No. 2015-29B.
Case Planner: Celine Cruz

VI. Adjournment

ATTACHMENT A



DIPATTAMENTON MINANEHAN TÂNO'
(Department of Land Management)
GUBETNAMENTON GUÅHAN
(Government of Guam)



DEPARTMENT OF
LAND MANAGEMENT

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

MICHAEL J.B. BORJA
Director

DAVID V. CAMACHO
Deputy Director

Street Address:
590 S. Marine Corps Drive
Suite 733 ITC Building
Tamuning, GU 96913

Mailing Address:
P.O. Box 2950
Hagåtña, GU 96932

Website:
<http://land.guam.gov>

E-mail Address:
dlmdir@land.guam.gov

Telephone:
671-649-LAND (5263)

Facsimile:
671-649-5383

January 3, 2017

MEMORANDUM

TO: Chairman, Guam Land Use Commission

FROM: Guam Chief Planner

SUBJECT: Staff Report
Application No. 2014-07C, Request for First Supplementary Final Public Report on Lot 5360-R19NEW-4 in the Municipality of Mangilao.

1. **PURPOSE:**

A. Application Summary: The applicant, Allegro Properties Corporation, represented by Attorney Melinda Swavely, Esq. of Dooley Roberts & Fowler LLP, request for issuance of a First Supplementary Final Public Report in order to continue to market and sell the Avida Townhomes project, located in an "R-2" (Multi-Family Dwelling) zone on Lot 5360-R19NEW-4, in the Municipality of Mangilao, under Application No. 2014-07C.

B. Legal Authority: Title 21, GCA (Real Property), Chapter 45 (Horizontal Property Act) Sections 45154 Automatic Expiration of Public Reports.

2. **FACTS:**

A. Pursuant to §45154 of Chapter 45, Title 21, GCA, all public reports expire thirteen (13) months after the date of issuance of said public report. The Commission approved and issued the Final Public Report for "Avida Townhomes" on December 10, 2015 with an expiration date of January 10, 2017 (Reference Instrument No. 889055).

B. Current Status. The developer is currently marketing the project as a whole to potential on-island and off-island investors. However, if the Developer is unable to sell the entire project in the next few years, it has plans to market the units individually.

C. Changes to Original Project. There are no material changes to the project since issuance of the Final Public Report on January 10, 2015.

Staff Report
Application No. 2014-07C
Request for 1st Supplementary Final Public Report
Lot 5360-R19NEW-4, Mangilao
Page 2 of 2

3. **STAFF RECOMMENDATION:** Based on information submitted, we recommend issuance of a First Supplementary Final Public Report in order for the developer to continue to sell the project containing 5 condominium units, and pursuant to §45154 of Chapter 45, Title 21 the issuance of this First Supplementary Final Public Report is for a period of thirteen months to end on February 12, 2018.



Marvin Q. Aguilar
Guam Chief Planner

Attachment

Case Planner: Celine Cruz

DOOLEY ROBERTS FOWLER & VISOSKY LLP
ATTORNEYS AT LAW

RECEIVED

12-22-16
12/6

DAVID W. DOOLEY
TIM ROBERTS
KEVIN J. FOWLER
JON A. VISOSKY
SETH FORMAN

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865 SOUTH MARINE CORPS DRIVE
TAMUNING, GUAM 96913
TELEPHONE: (671) 646-1222
FACSIMILE: (671) 646-1223
www.GuamLawOffice.com

Of Counsel:
MELINDA C. SWAVELY

Writer's Direct Email:
Swavely@GuamLawOffice.com

December 19, 2016

Via Hand Delivery

Mr. John Z. Arroyo
Chairman, Guam Land Use Commission
c/o Mr. Marvin Q. Aguilar, Guam Chief Planner
DEPARTMENT OF LAND MANAGEMENT
Government of Guam
Tamuning, Guam 96913

SUBJECT: AVIDA TOWNHOMES
REGISTRATION NO.: 168
TYPE: REQUEST FOR APPROVAL OF THE FIRST SUPPLEMENTARY FINAL REPORT

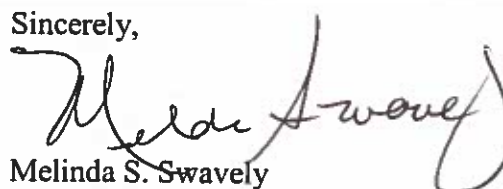
Dear Chairman Arroyo and Commissioners:

Our firm represents Allegro Properties Corporation ("Developer") of Avida Townhomes ("Project") on Lot No. 5360-R19NEW-4, Mangilao, Guam.

The Developer is requesting the issuance of a First Supplementary Final Report. The Developer is currently marketing the Project, as a whole, to potential on-island and off-island investors. However, if the Developer is unable to sell the entire Project in the next few years, it plans to market the Units individually.

We have attached hereto information in support of the issuance of a First Supplementary Final Report for the Project. Your favorable consideration of our request for issuance of a First Supplementary Final Report is respectfully requested.

Sincerely,



Melinda S. Swavely

Attachments

**INFORMATION IN SUPPORT OF THE ISSUANCE OF A FIRST SUPPLEMENTARY
FINAL REPORT FOR AVIDA TOWNHOMES**

1. Brief background information of the project identifying the project name and any amenities provided, its location by lot, block, tract number, municipality.

- a. Name of Project: Avida Townhomes
- b. Location: Lot No. 5360-R19NEW-4, Mangilao, Guam
- c. Zoning: R-2
- d. Developer: Allegro Properties Corporation
162 W. Route 8, Suite 100
Barrigada, Guam 96913
(671) 734-3011
- e. No. of Buildings and Floors: There is one (1) reinforced concrete apartment building with two (2) floors
- f. No. of Units: Five (5) Units.
- g. Unit Type: All of the five (5) apartment units have three (3) bedrooms, two and one-half (2-1/2) bathrooms, kitchen, living and dining room, storage area, balcony and two (2) parking stalls in the carport.
- h. Parking Stalls: Each apartment unit includes two (2) parking stalls in the carport. There are also five (5) parking stalls which are Common Elements of the Project and are for use by the owners, tenants, guests, and invitees. Each parking stall contains a minimum of hundred eighty (180) square feet, and has immediate access within the Project leading to a public street.
- i. Other Amenities or Features: Grounds refuse facilities, transformer, concrete area, ingress and egress along the front of the Project; three (3) foot concrete wall with chain link fence around the right and left side yards and rear of the Project, three (3) foot concrete wall and four concrete columns and decorative fencing along the front of the Project.

2. Number and identification of Units sold.

None.

3. Number and identification of Units not sold.

The following Units are not sold: Unit A, Unit B, Unit C, Unit D and Unit E.

4. **Type of extension requested.**

[] preliminary [X] final

5. **Number of extension (i.e., third, fourth, etc.).**

First.

6. **Real Estate Broker. Has the Developer retained the services of a real estate broker/company to marketing the remaining units? If so, please provide the complete name, mailing address and phone number of the broker/company. Does the Developer intend to market the remaining units himself or within his company?**

The Developer has retained the services of Elizabeth C. Duenas, a broker for ReMax, to market the units. The mailing address, telephone number, facsimile number, cellular number and email address for Elizabeth C. Duenas are as follows:

Elizabeth C. Duenas

Mailing Address: 238 East Marine Corps Dr., Suite 202, Hagatna, Guam 96910
Telephone No.: (671) 479-8843
Facsimile No.: (671) 479-8913
Cellular No.: (671) 687-0911
Email Address: lduenas@remax.guam.com

7. **Marketing Plan. A brief explanation on how the Developer or his broker plans to market the remaining condominium units.**

The Developer currently desires to sell the Project as a whole. If the Developer is unable to do so in the next few years, it plans to market the Units individually.

8. **Changes to original Project. Should there be any material changes to the Project at the time of the application for a supplementary report to extend an existing Report, the Developer shall be required to identify those exact changes in his Report, and provide an explanation as to what remedies or action has been taken to correct those changes. Supporting documents are recommended to justify material changes.**

There are no material changes to the Project.

GUAM LAND USE COMMISSION
DEPARTMENT OF LAND MANAGEMENT
GOVERNMENT OF GUAM
TAMUNING, GUAM 96913

FINAL HORIZONTAL PROPERTY REGIME
PUBLIC REPORT
ON

AVIDA TOWNHOMES

Lot No. 5360-R19NEW-4, MANGILAO, GUAM

REGISTRATION NO. 168

IMPORTANT - Read This Report Before Buying

This Report is Not an Approval or Disapproval
of This Condominium Project

It reflects information obtained by the Guam Land Use Commission ("Commission") in its investigation of the Project. This report, based on a principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The Developer shall not enter into a binding contract or agreement for the sale of any unit in the Project, until:

- (1) A copy of the Final Report has been given to the prospective purchaser,
- (2) The latter has been given an opportunity to read the same, and,
- (3) His receipt taken therefor.

Island of Guam, Government of Guam
Department of Land Management Officer of the Recorder
File for Record is Instrument No. 889055
On the Year 16 Month 2 Day 22 1157
Recording Fee 25
Deputy Recorder Joel D. Amador

Issued: December 10, 2015

Expires: January 10, 2017

SPECIAL ATTENTION

A comprehensive reading of this report by prospective purchasers is urged in order that personal requirements and expectations to be derived from the property can be ascertained. The attention of the purchaser or prospective purchaser is particularly directed to the following:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION DATED MAY 8, 2015. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, TITLE 21, GUAM CODE ANNOTATED, CHAPTER 45, AS AMENDED (THE "ACT").

1. **Description of Project.** The Project consists of Lot No. 5360-R19NEW-4, Mangilao, Guam ("Property") and improvements thereon consisting of a two (2) storey apartment building containing five (5) apartment units, each with three (3) bedrooms and two and one-half (2½) bathrooms ("Apartment Building"). The Common Elements of the Project include five (5) parking stalls, grounds, refuse facilities, transformer, ingress and egress along the front of the Project; three (3) foot concrete wall with chain link fence around the right and left side yards and rear of the Project, three (3) foot concrete wall and four (4) concrete columns and decorative fencing along the front of the Project sides and back of the Project, and other Common Elements of the Project.
2. **All Documents Submitted.** The Developer of the Project has submitted to the Commission for examination all documents deemed necessary for the registration of a condominium project and issuance of this Final Public Report.
3. **Compliance and Recording.** The Declaration of Horizontal Property Regime (the "Declaration"), Bylaws of the Association of Owners (the "Bylaws"), and a copy of the floor plans have been submitted to the Commission. The Commission finds these necessary documents comply with the Act. The Declaration, executed May 8, 2015, with the Bylaws attached, was recorded on January 22, 2016, at the Department of Land Management, Government of Guam under Instrument No. 887981 and the Condominium Map No. 168 for the Project was filed in the Office of the Recorder, Government of Guam on January 15, 2016, under Instrument No. 887821.
4. **Ownership of Project.** The Developer advises the Commission that it now owns the Project, including the Property in fee simple. On

completion of conveyance of all of the apartment units in the Project, the Developer will retain no residual interest in the Project.

5. **Horizontal Property Act.** The prospective purchaser is advised to acquaint himself with the provisions of the Act and any Condominium Rules and Regulations promulgated under the Act which relate to Horizontal Property Regimes.
6. **Term of Report.** This Final Public Report automatically expires thirteen (13) months after date of issuance, or on January 10, 2017, unless a Supplementary Public Report is published, or the Commission, upon review of the registration, issues an order extending the effective period of this Report.
7. **Printing and Distributing Report.** The Developer is responsible for placing this Final Public Report (white paper stock) in the hands of all prospective purchasers and for securing a signed copy of the receipt for the Final Public Report from each prospective purchaser.

- I. **Name of Project:** Avida Townhomes
- II. **Location:** Lot No. 5360-R19NEW-4, Mangilao, Guam
- III. **Zoning:** R-2
- IV. **Developer:** Allegro Properties Corporation
162 W. Route 8, Suite 100
Barrigada, Guam 96913
(671) 734-3011
- V. **Attorney representing Developer:** Melinda S. Swavely, Esq.
Dooley Roberts & Fowler LLP
865 South Marine Corps Drive, Suite 201, Orlean Pacific Plaza
Tamuning, Guam 96913
(671) 646-1222
- VI. **Description:**

§1. **The Project.** The Declaration reflects that the Project is comprised of the Property and the improvements consisting of the Apartment Building containing five (5) apartment units, and the Common Elements consisting of five (5) parking stalls, grounds, refuse facilities, transformer, ingress and egress along the front of the Project; three (3) foot concrete wall with chain link fence around the right and left side yards and rear of the Project, three (3) foot concrete wall and four concrete columns and decorative fencing along the front of the Project sides and back of the Project, and other Common Elements of the Project in accordance with the as-built drawings for the Project

prepared by Francisco Z. Diamzon and set out in Condominium Map No. 168, recorded with the Department of Land Management, Government of Guam, on January 15, 2016 under Instrument No. 887821.

§2. The Apartments. The five (5) apartment units each have three (3) bedrooms, two and one-half (2-1/2) bathrooms, kitchen, living and dining room, storage area, balcony and two (2) parking stalls in carport.

§2.1. Included Within Apartments. Each apartment unit is deemed to include the spaces bound by and contained within the perimeter walls, floors, windows, doors, and ceilings of each apartment unit inclusive of the carport and one (1) balcony area appurtenant to each apartment unit, including all the walls, beams and columns within the perimeter walls which are not load-bearing, and the interior decorated or finished surfaces of all load-bearing walls, beams and columns, floors, and ceilings within the perimeter walls. The apartment units are not deemed to include the undecorated or unfinished interior load-bearing walls, perimeter walls, floors and ceilings surrounding each apartment unit; the building foundation; and any pipes, wires, conduits, or other utility lines running to an apartment unit which are utilized for or serve other apartment units, and all other parts of the Project which are Common Elements.

§2.2. Apartment Number, Location, and Square Footage of the Apartment Units. The unit number, location, parking stalls, and square footage of the apartment units are as follows:

Apartment Building from North to South

<u>Apt. No.</u>	<u>Parking Stalls In Carport</u>	<u>No. of Square footage (including floor areas of carport and two balconies)</u>
Unit A	2	1,606.89 square feet, inclusive of two (2) car carport and balcony area on the second floor.
Unit B	2	1,606.89 square feet, inclusive of two (2) car carport and balcony area on the second floor.
Unit C	2	1,606.89 square feet, inclusive of two (2) car carport and balcony area on the second floor.
Unit D	2	1,606.89 square feet, inclusive of two (2) car carport and balcony area on the second floor.

Unit E

2

1,606.89 square feet, inclusive of two (2) car carport and balcony area on the second floor.

The square footage of each of apartment units is 1,606.89 square feet as follows: 1) the square footage of the apartment units excluding the carport and balcony area is 1,199.82 square feet; 2) the square footage of the carport area is 338.83 square feet; and 3) the square footage of the balcony is 68.69 square feet.

§3. Common Elements. The Declaration reflects that the Common Elements consist of:

§3.1. Land. The Property in fee simple subject to the following: 1) Grant of Right-of-Way for the Erection and Maintenance of Power Lines, Poles, Wires, Cables and Underground Conduits dated April 8, 2003 and recorded on May 22, 2003 under Instrument No. 675297, in the Department of Land Management, Government of Guam, executed by Grand Rock Corporation, Ltd., grantor to Guam Power Authority, grantee. RE: A 10' x 10' strip of land extending partially across Lot No. 5360-R19NEW-4, Mangilao; 2) Mortgage dated September 11, 2008 and recorded on September 11, 2008 under Instrument No. 779076, in the Department of Land Management, Government of Guam, executed by Allegro Properties Corporation, mortgagor to Citizens Security Bank (Guam), Inc., mortgagee, which states it secures a debt in the principal amount of \$660,000.00, plus interest; 3) Assignment of Rents dated September 9, 2008 and recorded on September 11, 2008 under Instrument No. 779077, in the Department of Land Management, Government of Guam, executed by Allegro Properties Corporation, assignor to Citizens Security Bank (Guam), Inc., assignee; 4) Notice of Action dated August 15, 2014 and recorded on September 9, 2014 under Instrument No. 869322, in the Department of Land Management, Government of Guam, in favor of Allegro Properties Corporation [Note: Request for a zone variance approval of an existing 7'8" right side yard setback and 9'10" rear yard setback of an existing 2-storey, 5-unit apartment complex. (Approved with conditions.); 5) Guam Law Use Commission Regular Meeting Minutes dated August 14, 2014 and recorded on September 19, 2014 under Instrument No. 869665, in the Department of Land Management, Government of Guam, in favor of Allegro Properties Corporation, request for side and rear setbacks of the building in an "R-2" (Multi-Family Dwelling) zone; 6) real property taxes not yet due and owing; and 7) all other liens, easements and encroachments of record.

§3.2. Building elements. The foundation, roof, and stairways of the building; and all load-bearing floors, walls, columns, and beams of the building, but excluding the interior decorated or finished surface of all such load-bearing floors, walls, columns and beams, and the ceilings within the perimeter walls of an individual apartment unit.

§3.3. Grounds and facilities. Grounds, refuse facilities, transformer, concrete area, ingress and egress along the front of the Project; three (3) foot concrete wall with chain link fence around the right and left side yards and rear of the Project, three (3) foot concrete wall and four concrete columns and decorative fencing along the front of the Project, and other Common Elements of the Project.

§3.4. Parking. The Common Element parking facilities consisting of five (5) parking stalls to be used by tenants, guests, and invitees. Each parking stall shall contain a minimum of one hundred eighty (180) square feet, and shall have immediate access within the Project leading to a public street.

§3.5. Fixtures. All pipes, cables, conduits, ducts, flues, chutes, wiring, equipment, and other central and appurtenant installations over, under, and in the Project which serve more than one (1) apartment for services such as and including conveyance, power, light, water, sewer, telephone and television signal transmission, if any;

§3.6. Other personal property. All articles of personal property of the Project necessary or convenient to its existence, maintenance, safety or normally in common use; and

§3.7. Other parts of property. All other parts of the Project defined as Common Elements under the Horizontal Property Act.

§4. Percentage of Common Element Interest to be conveyed Purchaser. The apartment units shall have appurtenant thereto an undivided interest in the Common Elements, as follows:

<u>Unit No.</u>	<u>Square Footage</u>	<u>Undivided Common Element Interest</u>
Unit A	1,606.89	20%
Unit B	1,606.89	20%
Unit C	1,606.89	20%
Unit D	1,606.89	20%
Unit E	1,606.89	20%

§5. Voting and Percentage in Common Elements. The interest in the Common Elements, proportionate share in the liability for Common Element expenses, proportionate interest in the profits, if any, in the Project, and representation for voting purposes shall be allocated on the basis of the percentage set out in §4, or as modified by the Declaration of Final Horizontal Property Regime. The percentage of the Common Element Interest of each apartment owner as expressed in the Declaration of Final Horizontal Property Regime shall have a permanent character and shall not be altered without the consent of all apartment owners affected, expressed in an amended Declaration duly recorded. The percentage of the Common Element Interest shall not be separated from the apartment unit to which it is appurtenant and shall be deemed to be conveyed or encumbered with the apartment unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

§6. Purpose of Building and Restrictions as to Use. The Declaration states that the apartments are intended exclusively for residential purposes except that a portion of the apartment unit may be used as a home office by the owner or tenant, provided the apartment unit owner has first obtained the permission of the Board as to the use, patronization, and conditions of

use of such home office. Such permission by the Board shall be required to be renewed on an annual basis and can be revoked by the Board at any time for good cause.

§7. Financing of Project. Financing for the Project was financed through the Developer's funds and a loan from Citizen Security Bank.

§8. Ownership of Land. The Developer is the owner in fee simple of the Property.

§9. Encumbrances Against Title. Developers own the land and building free and clear of all encumbrances, except: 1) Grant of Right-of-Way for the Erection and Maintenance of Power Lines, Poles, Wires, Cables and Underground Conduits dated April 8, 2003 and recorded on May 22, 2003 under Instrument No. 675297, in the Department of Land Management, Government of Guam, executed by Grand Rock Corporation, Ltd., grantor to Guam Power Authority, grantee. RE: A 10' x 10' strip of land extending partially across Lot No. 5360-R19NEW-4, Mangilao; 2) Mortgage dated September 11, 2008 and recorded on September 11, 2008 under Instrument No. 779076, in the Department of Land Management, Government of Guam, executed by Allegro Properties Corporation, mortgagor to Citizens Security Bank (Guam), Inc., mortgagee, which states it secures a debt in the principal amount of \$660,000.00, plus interest; 3) Assignment of Rents dated September 9, 2008 and recorded on September 11, 2008 under Instrument No. 779077, in the Department of Land Management, Government of Guam, executed by Allegro Properties Corporation, assignor to Citizens Security Bank (Guam), Inc., assignee; 4) Notice of Action dated August 15, 2014 and recorded on September 9, 2014 under Instrument No. 869322, in the Department of Land Management, Government of Guam, in favor of Allegro Properties Corporation [Note: Request for a zone variance approval of an existing 7'8" right side yard setback and 9'10" rear yard setback of an existing 2-storey, 5-unit apartment complex. (Approved with conditions.)]; 5) Guam Law Use Commission Regular Meeting Minutes dated August 14, 2014 and recorded on September 19, 2014 under Instrument No. 869665, in the Department of Land Management, Government of Guam, in favor of Allegro Properties Corporation, request for side and rear setbacks of the building in an "R-2" (Multi-Family Dwelling) zone; 6) real property taxes not yet due and owing; and 7) all other liens, easements and encroachments of record.

Developer will obtain a partial release of the above-referenced mortgage and assignment of rental income in favor of Citizen Security Bank for each apartment unit at the time of the conveyance of such apartment unit by Developer.

§10. Management and Operation. The management and operation of the Project shall be conducted by the Board or by any person or managing agent retained by the Board in accordance with the provisions of the Horizontal Property Act, this Declaration, the Bylaws of the Association, and House Rules, as such documents may be duly amended from time to time. The Members of the Board are hereby authorized to receive service of legal process in all cases provided in the Act. Leopoldo H. De Leon, whose address is 162 W. Route 8, Barrigada, Guam 96913, is authorized to receive service of legal process in all cases provided in the Act prior to the election of the first Board.

**Information in Report as of
December 10, 2015**

The purchasers or prospective purchaser should be cognizant of the fact that this published report represents information disclosed by the Developer in the Notice of Intention, Questionnaire, Declaration, and Bylaws, dated May 8, 2015, and heard before the Commission on December 10, 2015.

Finding that Report should Issue

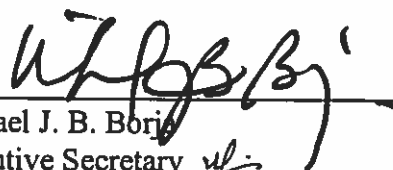
The Commission finds that the Developer has met and fulfilled the requirements of § 45115 of the Horizontal Property Act which establishes the provisions for the issuance of a Final Public Report, when reproduced shall be a true copy of the Commission's public report. The paper stock used in making facsimiles must be white in color.

Title, Number and Date

This is a FINAL HORIZONTAL PROPERTY REGIME (CONDOMINIUM) PUBLIC REPORT which is made a part of REGISTRATION NO. 168. The report, when reproduced shall be a true copy of the Commission's public report. The paper stock used in making copies must be white in color.

GUAM LAND USE COMMISSION,
PLANNING SECTION,
DEPARTMENT OF LAND MANAGEMENT,
GOVERNMENT OF GUAM,
TAMUNING, GUAM 96913

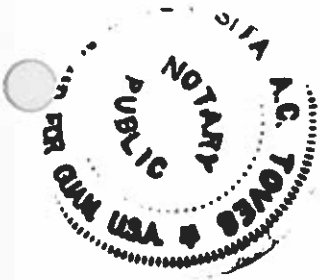
By: _____

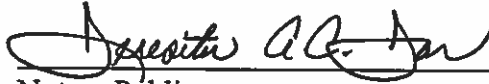

Michael J. B. Borja
Executive Secretary
Guam Land Use Commission

GUAM U.S.A.)
) ss:
CITY OF TAMUNING)

ON THIS 19th day of February, 2016, before me, a Notary Public in and for Guam, U.S.A., personally appeared Michael J. B. Borja, known to me to be the Executive Secretary of the Guam Land Use Commission, whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed on behalf of said commission for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.





Notary Public

TERESITA A.C. TOVES
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: **JULY 13, 2019**
P.O. Box 2950 Hagatna, Guam 96932

REGISTRATION NO. 168

ATTACHMENT B



DIPATTAMENTON MINANEHAN TANO'
(Department of Land Management)
GUBETNAMENTON GUAHAN
(Government of Guam)



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

MICHAEL J.B. BORJA
Director

DAVID V. CAMACHO
Deputy Director

Street Address:
590 S. Marine Corps Drive
Suite 733 ITC Building
Tamuning, GU 96913

Mailing Address:
P.O. Box 2950
Hagåtña, GU 96932

Website:
<http://land.guam.gov>

E-mail Address:
dlmdir@land.guam.gov

Telephone:
671-649-LAND (5263)

Facsimile:
671-649-5383

January 6, 2017

Memorandum

TO: Chairman, Guam Land Use Commission

FROM: Guam Chief Planner

SUBJECT: Application No. 2015-29B Zone Variance for Height

RE: Notice and Order to Show Cause Response

At its regular meeting of November 29, 2016, the Guam Land Use Commission (GLUC) reviewed the Status Report for conditions of approval for Guam Wanfang Construction Ltd.

The submitted report determined to be lacking in content, thus direction initiated by the Chairman to issue an Order to Show Cause as to the reason(s) for failure to comply with Conditions of Approval of the Zone Variance for Height for the proposed Pago Bay Marina Resort, as noted on Notice of Action, dated May 10, 2016. The applicant was to present a complete and exact report to address the following within two weeks of receipt of the notice and order:

- a) Failure to meet the required six (6) month deadline;
- b) The financial status of the project;

Further, at its meeting on November 29, 2016, the GLUC identified the following additional items to be addressed:

- c) Density requirement appearing to have been exceeded;
- d) Not meeting the parking requirements;
- e) Update and status on the internment of remains; and
- f) Written report from the Army Corps of Engineers on any possible impacts to the wetlands.

Application No. 2015-29B
Notice & Order to Show Cause Response
Page 2 of 2

Actions and events occurring after the Chairman's directive included:

- a) On December 5, 2016, the Executive Secretary of the GLUC received a letter from FC Benavente, Planners advising that their company will no longer represent the project before the GLUC (Attachment A).
- b) A Notice and Order to Show Cause was issued to the applicant's representative, Mr. John Sherman of AES Construction Inc. on December 7, 2016 (Attachment B).
- c) In response, on December 21, 2016, the applicant submitted the "Pago Bay Ocean Resort OTSC December 7, 2016 Response December 21, 2016.
- d) Additional information submitted on December 22, 2016 from Dooley Roberts Fowler & Visosky LLP Attorneys at Law, containing the Draft Agreement pursuant to section 8 of the May 3, 2016 Notice of Action re: Pago Bay Marina Resort (Attachment C).
- e) On December 23, 2016, Ms. Barbara Burkhart, the Designer of Record submitted corrections to some typographical errors discovered (Attachment D).
- f) On December 27, 2016, final adjustments to the submission regarding the proposed Reburial Site (Attachment E).

In light of information provided, we are of the opinion the applicant has met the minimum requirements in response to the issued Order to Show Cause and we defer to providing further technical assistance as may be needed by the Commission.



Marvin Q. Aguilar
Guam Chief Planner

Attachments

Case Planner: Celine Cruz

RECEIVED
MB 12/5
DEC 05 2016
Department of Land Management
Date 12/7/16 by 4168

FC BENAVENTE, PLANNERS

Planning, Zoning, Land Development Consulting, Permitting

127 Bejong Street, Barrigada, Guam 96913

Tel: 671.988.7011 felouben@gmail.com

December 1, 2016

20 FILE

Mr. Michael Borja, Executive Secretary
Guam Land Use Commission
C/O Department of Land Management
PO Box 2950
Hagatna, Guam 96910

Subject: Notice of Termination of Consultant Services for Pago Bay Marina Resort, Lot 164-4NEW-1 (GLUC No. 2015-29B), in the Municipality of Yona.

Hafa Adai Mr. Borja,

Please be advised that our company will no longer be representing the above subject project before the Guam Land Use Commission. This action is effective December 1, 2016.

We express our appreciation for all the assistance, support, and courtesies extended to our company, particularly by your agency as well as by other GovGuam agencies during our involvement with Pago Bay Marina Resort.

You may contact our Associate Planner, Mr. Raymond Benavente at 988-4142, or at gmgusa@yahoo.com should you need general information.

We appreciate your understanding and consideration.

Si Yu'os Ma'Ase


Lourdes A. Benavente
General Manager

26
1217

ATTACHMENT B

The attached **Notice and Order to Show Cause** dated **December 7, 2016** was duly served upon and acknowledged by **GUAM WANFANG CONSTRUCTION, LTD** at **10:50am, December 7, 2016** at Unit 308, Sunny Plaza, 125 Tun Jesus Crisostomo Street, Tamuning.



JOHN J. GUMATAOTAO, Land Agent
Special Process Server for the Department of Land Management

1
2 **GUAM LAND USE COMMISSION**
3
4
5

6 In the Matter of:)
7) APPLICATION No. 2015-29B
8 Guam Land Use Commission)
9) NOTICE & ORDER TO
10 vs.) SHOW CAUSE
11)
12 Guam Wanfang Construction Ltd.)
13
14
15

16 **THE GUAM LAND USE COMMISSION TO:**
17

18 Guam Wanfang Construction Ltd.
19 Unit 108 Sunny Plaza
20 125 Tun Jesus Crisostomo Street
21 Tamuning, Guam 96913
22
23

24 **YOU ARE ORDERED TO SHOW CAUSE** as to the reason (s) for
25 failure to comply with Conditions of Approval of the Zone Variance for
26 Height for the proposed Pago Bay Marina Resort as noted on Notice of
27 Action, dated May 10, 2016 and to present a complete and exact report to
28 address the following within two (2) weeks of receipt of this notice and
29 order:
30

- 31 a) Failure to meet the required six (6) month deadline;
32 b) The financial status of the project;
33

34 Further, at its meeting of November 29, 2016, the GLUC identified
35 the following additional items to be addressed:
36

- 37 c) Density requirement appearing to have been exceeded;
38 d) Not meeting the parking requirements;
39 e) Update and status on the interment of remains; and
40 f) Written report from the Army Corps of Engineers on any possible
41 impacts to the wetlands.

1
2 You should be prepared to provide evidence to the GLUC as to how
3 you complied or any work towards compliance with all of the conditions of
4 the Notice of Action. Failure to appear at the hearing may result in a
5 default judgment against you.
6

7 **YOU ARE ORDERED TO APPEAR** at the Guam Land Use
8 Commission ("GLUC") Meeting at the Guam International Trade Center
9 (GITC) Building, 590 S. Marine Corps Drive, Third Floor, Department of
10 Land Management (DLM) Conference Room, Tamuning, Guam on
11 January 12, 2017 at 1:30 p. m. to address your submitted report.
12

13 **IMPORTANT:** This hearing directly affects the continuation of
14 your project. You should seriously consider your actions relative to
15 this notice.
16

17
18 Dated this 7th day of December, 2016
19
20

21
22
23 GUAM LAND USE COMMISSION

24
25 By: _____

26 **John Z. Arroyo**
27 Chairman
28
29
30
31

Seary Plaza
Unit 305

Received
12-7-2016 10:50 Am
John Stenman

DOOLEY ROBERTS FOWLER & VISOSKY LLP
ATTORNEYS AT LAW

RECEIVED

12-22-2016

DAVID W. DOOLEY
TIM ROBERTS
KEVIN J. FOWLER
JON A. VISOSKY
SETH FORMAN865 SOUT MARINE CORPS DRIVE
SUITE 201
TAMUNING, GUAM 96913
TELEPHONE: (671) 646-1222
FACSIMILE: (671) 646-1223
www.GuamLawOffice.comOf Counsel:
MELINDA C. SWAVELYWriter's Direct Email:
Forman@GuamLawOffice.com

December 21, 2016

VIA HAND DELIVERYJohn Z. Arroyo, Chairman
Guam Land Use Commission
ITC Building
590 South Marine Corps Drive
Tamuning, Guam 96913

MB 12/23

VIA HAND DELIVERYMarvin G. Aguilar, Guam Chief Planner
Department of Land Management
590 South Marine Corps Drive
Tamuning, Guam 96913**Re: Draft Agreement pursuant to section 8 of May 3, 2016 Notice of Action re:
Pago Bay Marina Resort**

Dear Chairman Arroyo and Chief Planner Aguilar:

Attorney Jon Visosky of our office is currently representing Wanfang Construction, Ltd. and Guam Wanfang Construction Ltd. with regards to matters pending before the Guam Land Use Commission concerning the Pago Bay Marina Resort project. Because Jon is currently off-island, I have been asked to prepare a document to be submitted to the Commission for review, that being a draft agreement between the Commission and Wanfang concerning a demolition bond to assure demolition of structures associated with the project in the event that Wanfang cannot complete the project due to lack of funding. Wanfang is required to submit this draft agreement by section 8 of the Notice of Action prepared on May 3, 2016 concerning Wanfang's request for a height variance. A draft agreement is enclosed for your review and comments. Because section 8 did not provide substantial detail concerning the agreement to be submitted for the Commission's review, I would like to call your attention to some of the proposed language that has been included to "fill in the blanks".

I would note that the draft agreement provides for a bond payable to the Guam Department of Public Works in the amount of 110% of the estimated cost of demolition of the

Handwritten initials "MB" and the date "12-27-16" in the bottom right corner.

project, not 110% of the cost of the entire project. This is because the bond would be used only to demolish the incomplete project, rather than to complete, the project.

The draft agreement provides for reports from Wanfang to the Commission up until the time that construction commences. Wanfang understands that once construction has commenced, the Department of Public Works would be the agency with primary responsibility for oversight in accordance with Guam law.

The draft agreement also provides for demolition of any or all parts of the project that are incomplete and that violate any Guam law, are a hazard to the environment or public health, and/or are an eyesore. It is Wanfang's understanding and belief that even if the entire project is not completed on time, the bond would and should not be used to demolish buildings or facilities that are complete and functional.

With respect to review of an initial decision by the Commission to authorize use of the bond to commence demolition, the draft agreement provides that Wanfang would have a minimum (and at the Commission's discretion, that could also be a maximum) of 30 days to seek reconsideration of such a decision. The draft agreement provides that Wanfang could not seek judicial review of the decision without first seeking reconsideration from the Commission. The draft agreement further provides that if Wanfang then seeks judicial review, a decision by the Commission which is in accordance with the law and which is supported by substantial evidence shall be conclusive. This is the same deferential standard of review applied to other administrative agency decisions in 9 GCA §9239 in Guam's Administrative Adjudication Law.

Thank you for your attention to this matter. Representatives of Wanfang and either Jon or I would of course make ourselves available to meet with you and/or the Commission's attorney to discuss this Draft Agreement. Once the draft agreement has been reviewed and approved, we can arrange to have it finalized and recorded.

Sincerely,

DOOLEY ROBERTS FOWLER & VISOSKY LLP

Seth Forman

Seth Forman

Encl.

cc: James Fang, Vice President/General Manager
Guam Wanfang Construction Ltd.

John K. Sherman, PE, President
AES Construction

**DRAFT AGREEMENT BETWEEN GUAM LAND USE COMMISSION AND GUAM
WANFANG CONSTRUCTION LTD. CONCERNING DEMOLITION BOND**

THIS AGREEMENT is entered into this ____ day of December, 2016, by and between the Guam Land Use Commission, hereinafter called "the Commission", represented by the Chairman of the Commission, and Wanfang Construction Ltd., hereinafter called "Wanfang", represented by the General Manager of Guam Wanfang Construction Ltd..

WHEREAS, in Application No. 2015-29A, Wanfang applied to the Commission for a zone variance for height to construct the Pago Bay Marina Resort on Lot 164-4NEW-1, Municipality of Yona; and

WHEREAS, on May 3, 2016, the Commission approved the application for the zone variance for height with conditions; and

WHEREAS, the conditions for the approval included a requirement that there be an agreement between Wanfang and the Commission to assure the availability of funding for the demolition of structures associated with the project in the event the developer fails to realize project completion as a result of lack of funding;

NOW THEREFORE the Commission and Wanfang agree as follows:

1. Wanfang shall commence construction on the Pago Bay Marina Resort project by May 1, 2017, and shall complete the project by November 30, 2019.
2. From the date of recordation of approval for the project up until the date of commencement of construction, Wanfang shall submit a written report every six months to the

Commission on the status of the project with respect to the associated phases of development. The reports shall include the status of funding for the overall project. Prior to commencement of construction, Wanfang shall provide the Commission with documentation that it has the financial capability to complete the project.

3. Prior to securing permits for the project, Wanfang shall obtain an estimate of the cost of demolition of the structures associated with this project from a reputable demolition company. Wanfang shall provide a copy of the estimate to the Commission.

4. Wanfang shall obtain a bond payable to the Guam Department of Public Works in an amount equal to 110% of the estimated cost of demolition of the structures associated with this project.

5. If the project is not completed by May 31, 2020, or if the Commission determines through substantial evidence that the project has been abandoned without being completed prior to that date, and if the Commission determines through substantial evidence that any or all parts of the incomplete project that are in place at that time violate any Guam law, are a hazard to the environment or public health, or are an eyesore visible from adjoining property or public roads, then the Commission may issue a decision authorizing the Department of Public Works to use the funding from the bond to demolish such parts of the project.

6. Wanfang may seek reconsideration from the Commission of a decision issued pursuant to paragraph 5 of this agreement within such time period as the Commission finds to be reasonable, provided that such time period shall not be less than 30 days. When seeking such reconsideration, Wanfang must cite appropriate reasonable justification to rescind such order. No demolition shall take place and no funds from the bond shall be expended while a request for

reconsideration, or an appeal therefrom, is pending. The request for reconsideration is a requirement for Wanfang to exhaust its administrative remedies before Wanfang may appeal the decision as set forth in paragraph 7 below.

7. Wanfang's may appeal any decision made by the Commission pursuant to this Agreement to the Superior Court of Guam by filing a petition for judicial review in the Superior Court of Guam within 30 days after denial of a request for reconsideration. A decision of the Commission which is in accordance with the law and which is supported by substantial evidence shall be conclusive.

8. Wanfang may request the release of any bonding obtained pursuant to this Agreement when the project is complete and a final occupancy permit has been secured through the Guam Department of Public works.

GUAM LAND USE COMMISSION

Dated: _____

By: _____

John Z. Arroyo, Chairman

GUAM WANFANG CONSTRUCTION, LTD.

Dated: _____

By: _____

**James Fang, Vice President/General
Manager**

TAMUNING, GUAM) ss:

)

ON THIS ____ day of December, 2016, before me, a Notary Public in and for the Territory of Guam, personally appeared **John Z. Arroyo**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public

TAMUNING, GUAM) ss:

)

ON THIS ____ day of December, 2016, before me, a Notary Public in and for the Territory of Guam, personally appeared **James Fang**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public

RECEIVED
12/23/16
OK

December 23, 2016

Department of Land Management
ITC Building Suite 733
590 S. Marine Corps Drive
Tamuning, GU 96913

Attention: Mr. Marvin Aquilar
Chief Planner

Re: Status of Notice To Show Cause (NSC) – November 29, 2016
Addendum to December 21, 2016 Submission

Mr. Aquilar,

On behalf of Guam Wanfang Construction, we submit the following Addendum to our December 21, 2016 Submission

We take seriously the statistics for the project and triple checked the numbers and counts after submission. We found a few typographical and counting errors. Please accept these corrections.

Response Letter – revise total parking as follows

1. Total Parking Spaces provided 272. Requirement is 1:1 residential unit count to parking count, exceeding required minimums by 40 spaces.

B100 – Full Size 107 Total 113

Attachment 2 – Square Footage Summary – Replace entire section with Attachment

Thank you for your time.



Barbara Burkhardt, RA
Designer of Record

I. **Lot Number** LOT 164-4NEW-1
 II. **Municipality** Yona

Lot Area		299,505 sf
Wetland Reserve	32%	96,660 sf
Vegetative Barrier (V.B.)	20%	58,258 sf

III. **Building Footprint** 16% 49,261 sf

IV. **Public Area**

Recreational Swimming Pool 92)		10,887 sf	
Play Area / Slide		1,986 sf	
Landscape/ Driveway Areas		60,933 sf	
* Boardwalk & viewing Platforms V.B.		(3,784) sf	* sf not included
Concrete Decks & Lounge Area		17,124 sf	
* Gabion Sea Wall (450lf x 6 ft) V.B.		(2,700) sf	* sf not included
Beach Access		4,066 sf	
Total Public Area	32%	94,996 sf	

V. **** Off-Site Grading Route 4 Embankment** (16,670) sf ** sf not included

VI. **Parking Data**

Upper Level Parking Area		74,124 sf
Full Size	107	
Compact	2	
ADA Parking	4	
Lower Level Parking Area		76,813 sf
Full Size	127	
Compact	3	
ADA Parking	4	
Ground Level Site Parking		
Full Size	25	
Total Car Parking	272	
Other Parking – Bus	1	
Emergency Vehicle Access	1	

VII. Tower A

	Unit Type	Number of Bedrooms	Number of Bathrooms	Floor Area (Square Feet)	Balcony (Square Feet)
Floor Levels 1 – 11					
	AA	2	2	1,085	222
	AB	2	2	1,070	245
	AC	3	3	1,707	671
	AD	3	3	1,500	562
	AE	2	2	1,070	245
	AF	2	2	1,085	248
	AG	1	2	796	176
	AH	1	2	754	397
	AI	1	2	797	182
	AJ	2	2	1,052	447
	AK	2	2	<u>1,129</u>	<u>442</u>
Total Residential Units/ Floor					
11 Units per Floor/ Gross Areas Per Floor				12,106	3,838

Shared Floor Area per Floor

Stairs	336
Elevator	233
Circulation & Hallways	1,877
Chute	68
Housekeeping / Electrical Closet	212
Ice Machine Room	<u>43</u>
Total Shared Space	2,769

Total for Tower A

11 levels	
121 Units	
Gross Tower A Area	205,843 sf

VIII. Tower B

	Unit Type	Number of Bedrooms	Number of Bathrooms	Floor Area (Square Feet)	Balcony (Square Feet)
Floor Levels 2 – 10					
	BA	2	2	1,085	222
	BB	2	2	1,070	245
	BC	3	3	1,707	671
	BD	3	3	1,500	562
	BE	2	2	1,070	245
	BF	2	2	1,085	248
	BG	1	2	796	176
	BH	1	2	754	397
	BI	1	2	797	182
	BJ	2	2	1,052	447
	BK	2	2	<u>1,129</u>	<u>442</u>
Total Residential Units/ Floor					
11 Units per Floor /Gross Area per Level				12,106	3,838

Shared Floor Area per Floor

Stairs	336
Elevator	233
Circulation & Hallways	1,877
Chute	68
Housekeeping / Electrical Closet	212
Ice Machine Room	<u>43</u>
Total Shared Space	2,769

9 Levels

99 Units

Subtotal Gross Area **168,417 sf**

Unit Type	Number of Bedrooms	Number of Bathrooms	Floor Area (Square Feet)	Balcony (Square Feet)
Floor Level 1				
BA	2	2	1,085	189
BB	2	2	1,070	205
BC	3	3	1,707	504
BD	3	3	1,500	408
BE	2	2	1,070	208
BF	2	2	1,085	151
BG	1	1	796	176
BK	2	2	<u>1,129</u>	<u>313</u>
Total Residential Units/ Floor				
8 Units per floor/ Gross Area Per Floor			9,442	2,154

Shared Floor Area per Floor

Stairs	304
Elevator	233
Circulation & Hallways	2,329
Trash Chute	68
Housekeeping / Electrical Closet	346
Ice Machine Room	74
Lobby Mechanical Room	<u>240</u>
Total Shared Space	3,594

1 Level

8 Units

Subtotal Gross Area **15,190 sf**

	Unit Type	Number of Bedrooms	Number of Bathrooms	Floor Area (Square Feet)	Balcony (Square Feet)
Floor Level M	B	2	2	1,070	205
	C	3	3	1,707	504
	D	3	3	1,500	408
	E	2	2	1,070	208
	Total Residential Units/ Floor				
	4 Units per Floor			<u>5,347</u>	<u>1,325</u>
	1 Level				
	4 Units				
	Subtotal Gross Area			6,672	

Total for Tower B

11 levels	
111 Units	
Gross Tower B Area	190,579 sf

IX. Ground/ Lobby Floor

Lobby entry/ Arrival/ Front Desk	834
Guest Lobby Lounge Area (2)	12,344
Gym (Lower Level -Pool Access)	3,945
Restaurant	4,624
Café	1,524
Kitchen	4,035
Function Rooms	5,106
Retail	4,331
Elevator Lobbies	1,634
Stairs	608
Open Lanai Deck Area/ Fountain	<u>3,600</u>
Gross Ground Total Area	42,585 sf

X. Mezzanine Floor

Admin Offices	4,411
Maintenance & Housekeeping	5,453
Stairs	760
Elevator Lobbies & Circulation	5,610
Guest Lounge Area	2,400
Gym (Main Level)	<u>5,746</u>
Gross Mezzanine Total Area	24,380 sf

ATTACHMENT E

December 27, 2016

Department of Land Management
ITC Building Suite 733
590 S. Marine Corps Drive
Tamuning, GU 96913

RECEIVED
12-27-16

Attention: Mr. Marvin Aquilar
Chief Planner

Re: Status of Notice To Show Cause (NSC) – November 29, 2016
Addendum 2 to December 21, 2016 Submission

Mr. Aquilar,

On behalf of Guam Wanfang Construction, we submit the following Addendum to our December 21, 2016 Submission

We take seriously the statistics for the project and triple checked the numbers and counts after submission. We found an error on the Restriping of the parking lot at the proposed Reburial Site.

1. Parking Spaces provided restriped to 8'6 x 19'.
2. Attachment 4 - Sheet AS- 101 Site Plan, Resubmitted as Attached.

We also submit 2 CD's of the Project Manual. All Addendum and Addendum 2 are included on the CD.

Thank you for your time.



Barbara Burkhardt, RA
Designer of Record



AES CONSTRUCTION
PMS 2384 SITE FOR
2770 N. MARINE CORPS DR.
TAMMUNG, GUAM
(671) 646-6321

Drawn, Written and Approved

Drawn / Date

I certify that this work was prepared by me or under my direct supervision.

Sheet Content			
ENLARGED BURIAL SITE PLAN			
No.	Revision/Issue	Date	Approved
02.	GLUC Status Update Revision	12/02/2016	

Drawn, Written and Approved

GUAM WANFANG CONSTRUCTION
106 SLANTY Plaza
225 1st Avenue Chedoke St.
Tammung, Guam 96913

Project Name and Address

PROPOSED GEOLOGICAL RE-BURIAL SITE
PAGO BAY LAGUNA RESORT

GUAM

NOTE: THIS SITE IS EXISTING ONLY THE BURIAL AREA AND REPAINT PARKING ARE NEW

RE-BURIAL ENLARGED SITE PLAN

SCALE 3/32" = 1'-0"



